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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,216	07/08/2003	Bobby Ray Ricks	SUT103	8512

7590 06/17/2004  
William E. Noonan  
P.O. Box 07338  
Fort Myers, FL 33919

EXAMINER

TORRES, ALICIA M

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/615,216

**Applicant(s)**

RICKS, BOBBY RAY

**Examiner**

Alicia M Torres

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Objections***

1. Claim 4 is objected to because of the following informalities: it is unclear as to which claim claim 4 depends from. Appropriate correction is required. For purposes of the instant Office Action, claim 4 has been taken to depend from claim 1.

***Specification***

2. The disclosure is objected to because of the following informalities: the last sentence of page 6 is incomplete. Appropriate correction is required.

3. The disclosure is objected to because of the following informalities: reference number “46” has been used to indicate both a pivot bearing and a conveyor. Appropriate correction is required.

***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “46” has been used to designate both a pivot bearing in Figure 3 and a conveyor in Figure 4. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any

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required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cernusco.

Cernusco discloses a machine for harvesting produce from a pair of adjacent, generally parallel rows of produce-bearing trees, said machine comprising:

a land vehicle (10) that includes a chassis (11) for being driven between the adjacent rows of trees, said chassis (11) supporting a produce collection receptacle (17);

at least one pair of selectively extendible and retractable lift arms (40, 41, 42) pivotally mounted to said chassis (11), each arm (40, 41, 42) in each said pair supporting proximate a distal end thereof a carrier (25) for holding a person, and said arm (40, 41, 42) being adjustable to position said carrier (25) such that a person in the carrier (25) is able to manually collect fruit from a respective one of the rows of trees; and

a plurality of conduits (19), each conduit (19) attached proximate to an upper end thereof to a respective one of said carriers (25) such that an entrance of said conduit (19) is accessible to a person in said respective carrier (25) and each conduit (19) further being attached proximate a lower end thereof to said receptacle (17) such that produce deposited into said entrance of said

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conduit (19) by the person in said carrier (25) is transmitted through said conduit (19) and discharged into said receptacle (17), as per claim 1; and

in which said lift arms (40, 41, 42) are mounted on respective opposite sides of said chassis (11) such that each arm (40, 41, 42) is positioned to correspond with a respective one of the adjacent rows of trees, as per claim 2; and

further including a conveyor (21) mounted to said chassis (11) for transmitting fruit from said receptacle (17) to a storage bin (23) connected to said chassis (11), as per claim 3; and

in which each arm (40, 41, 42) is telescopically extendible and retractable, as per claim 4; and

in which said carrier (25) includes a bucket, as per claim 5; and

in which said conduit (19) includes a flexible pipe (20), as per claim 8; and

in which said conduit (19) carries a funnel at said upper end thereof for facilitating introduction of collected produce into said conduit (19), as per claim 9.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cernusco in view of Daniel.

Cernusco discloses the device as applied to claim 1 above. However, Cernusco fails to disclose further making at least one chute attached to said chassis and communicating with said receptacle for introducing produce collected from proximate ground level into said receptacle.

Daniel discloses a similar harvester including at least one chute (21) attached to said chassis (11) and communicating with said receptacle for introducing produce collected from proximate ground level into said receptacle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the ground level chute of Daniel on the harvester of Cernusco in order to provide an easy and economic harvesting means.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cernusco in view of Gerber.

The device is disclosed as applied to claim 1 above. However, Cernusco fails to disclose in which said lift arms include a first pair of upper level arms for positioning their associated carriers and persons therein so that the persons are able to collect produce from the upper levels of the adjacent rows of trees and a second pair of intermediate level arms for positioning their associated carriers and persons therein so that such persons are able to collect produce from intermediate levels of the adjacent rows of trees, which intermediate levels are below the upper levels.

Gerber discloses a similar harvesting machine in which said lift arms (24) include a first pair of upper level arms for positioning their associated carriers and persons therein so that the persons are able to collect produce from the upper levels of the adjacent rows of trees and a

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second pair of intermediate level arms for positioning their associated carriers and persons therein so that such persons are able to collect produce from intermediate levels of the adjacent rows of trees, which intermediate levels are below the upper levels.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the carrier positioning of Gerber on the harvester of Cernusco in order to pick from different heights.


### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wilcox, Jr., Tyros, and McKenna et al. have been cited as of interest.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

AMT June 7, 2004